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COMPETITION POLICY AND DEVELOPMENT: KEY ISSUES FOR DEVELOPING COUNTRIES – A BRIEFING*

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* This is a background paper which has been prepared for the South Centre for their work on the programme on WTO and developing countries.

Competition Policy and Development: Key Issues for Developing Countries – A Briefing

I. Introduction

The purpose of this short paper is to provide a briefing for developing countries to apprise them of the main issues which are relevant for development and social welfare in relation to the present and prospective discussions on competition policy which are taking place at the WTO, UNCTAD, OECD and other fora. Competition policy is one of the subjects which will come up at the WTO ministerial meeting in Seattle next month. Although this is the immediate backdrop for the discussions on competition policy and economic development, the topic is important in its own right. Further as will be explained below, the issues relating to a competition policy and economic development also derive their urgency for the South from important new developments in the world economy.

II. WTO, Competition Policy and Development

The WTO Ministerial Conference held in Singapore in December 1996 declared as follows:

> "20. …, we also agree to:
>
> …establish a working group to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.
>
> In the conduct of the work of the working group[s], we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account. … It is clearly understood that future negotiations, if any, regarding multilateral disciplines in these areas, will take place only after an explicit consensus decision is taken among WTO Members regarding such negotiations." (WTO, 1997)

The General Council of the WTO established a Working Group in April 1997 on the Interaction Between Trade and Competitive Policy under the chairmanship of Professor Frédéric Jenny. The non-paper by the chair, "Checklist of Issues Suggested for Study", called for particular attention to the "development dimension" in the Working Group's discussion on these issues: "It was widely recognised that the Working Group's work programme should be open, non-prejudicial and capable of evolution as the work proceeds. It was also emphasized that all elements should be permeated by the development dimension."

Although the Working Group has made notable progress on its mandate, and there has been much useful work carried out at UNCTAD and other fora, it is, to put it mildly, rather anomalous that what is missing from the interim documentation released by the international agencies is precisely the developmental dimension. A serious policy analysis of competition policy and economic development, it will be argued here, requires fresh concepts and new definitions. An analysis of such issues, which are of vital importance to developing countries, within the traditional WTO terms will be highly prejudicial to the South's development needs.

The order of discussion of the various topics in this paper and the construction of its central argument is as follows:

First, it is suggested here that although many developing countries may not have needed a competition policy before, most require it today, regardless of whether or not the subject is discussed at the next or future WTO ministerial meetings. This is in part due to the potential welfare-reducing effects of the current merger wave that is sweeping the world economy. Further significant internal structural changes within developing countries themselves also underline the need for competition policy

Secondly it is argued that many developing countries cannot aspire to have the kind of competition policies which advanced countries implement. More importantly it is suggested that it is not, in any case, in the interest of developing countries to do so. Competition policies for advanced countries are shown not to be appropriate for the stage of development of most developing countries.

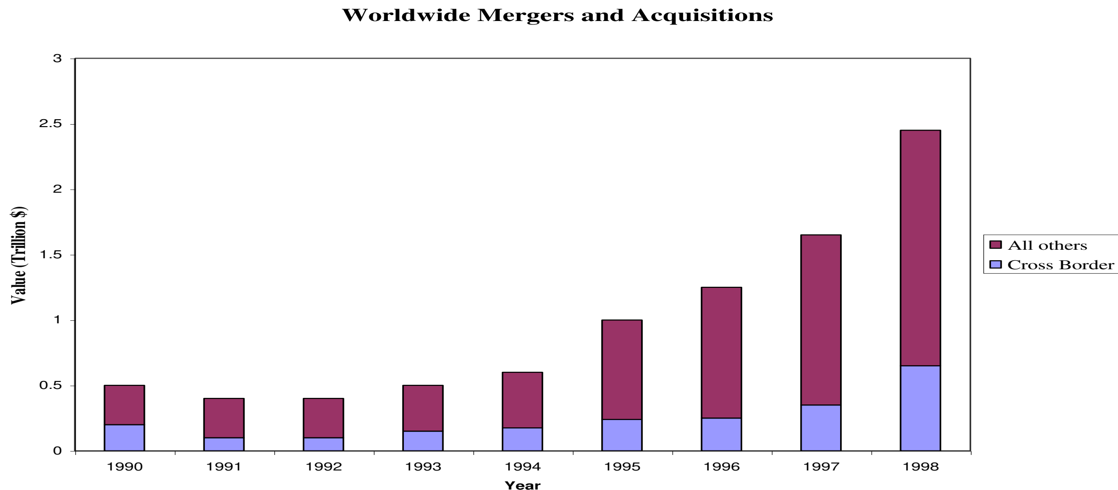
Thirdly, the paper outlines the kind of competition policies which would best serve the interests of developing countries. It will be suggested that the formulation of such policies require rather different economic concepts than those which are normally applied in advanced countries.

Fourthly, the implications of these economic concepts for the legal definitions and terms commonly used in the WTO discourse on the subject will be examined. It will be suggested that to encompass the circumstances and needs of developing countries will require new meaning to be given to some old concepts as well as a different terminology. In addition, it will also entail significant new institution building by the international community. This part of the paper will interalia comment on WTO concepts of TRIMS, TRIPS, Balance of Payments, and Antidumping in relation to competition policy.

Finally, it will be suggested that the special and differential treatment for developing countries as adumbrated will not only serve the interests of developing countries but will also be in the long term interests of advanced economies. The proposed measures are in that sense Pareto optimal for the world economy.

III. *The Global Merger Wave*

One of the most important reasons why some kind of competition policy for developing countries has become imperative is the gigantic merger wave which has gripped the world economy in the 1990s. As Chart 1 shows between 1990 and 1998 the value of world wide mergers and acquisitions rose nearly five fold. Most of this merger



activity took place within the U.S. Data reported in the Financial Times (FT, October 25, 1999, Not reproduced here) suggests that of the total world wide merger activity of nearly 2.5 trillion dollars, almost 1.6 trillion dollars represented takeovers and mergers within the United States; much of the remaining activity occurred in other industrial countries.

An important characteristic of the present merger wave is the increasingly significant incidence of cross border takeovers and mergers. Most of these also take place among the industrial countries themselves. However, during this decade, a considerable proportion of foreign direct investment (FDI) by industrial country firms in developing countries has taken the form of acquisition of existing enterprises rather than green field investment. UNCTAD (1999) data suggests that if China (which among developing countries was not only the largest recipient of FDI, but most of this investment has also been greenfield) is excluded, the share of the mergers and acquisitions in accumulated FDI rose from 22% during 1988 to 1991 to an average of 72% in the time span 1992 to 1997.

Periodic merger wave has been an integral part of the capitalist development since its inception.[1] Mergers and acquisitions represent an important mechanism for reorganisation and restructuring of a market economy. Many of the leading corporations in the world today are the products of mergers affected in the previous merger waves. Economic theory suggests that mergers can have both positive and negative effects on welfare. At the simplest level, the former may take the form of synergy among the amalgamating firms, and/or economies of scale which improve efficiency and reduce

[1] Evidence suggests that mergers are not randomly distributed over time but occur in waves. (See Scherer and Rose, 1992; Singh, 1992a, 1992b; Hughes 1994)

costs of production; the latter may arise from increased monopoly power of the merged firms which may be welfare reducing.[2]

Both in the U.S. and U.K. one of the most important and largest mergers movement occurred a hundred years ago, during the 1890s. Although rigorous empirical work has not yet been done on the subject, back of the envelope calculations suggest that the merger boom of the 1990s, taking into account the effects of factors such as the growth in the size of the economy and the rate of inflation, will be the biggest ever recorded.[3] This wave has already resulted in increased concentration in a wide range of industries including aerospace, defence equipment, power equipment, home machinery, automobile and automobile components, pharmaceuticals, soft drinks, snack foods, chemical fertilisers, retailing, accountancy and financial services (Nolan,1998).[4]

The merger boom of the 1990s is of course not entirely an exogenous or autonomous event. It is in part caused by liberalisation and globalisation, greater integration of world markets through finance and trade, the creation of the European single market among other factors. The firms are jockeying for strategic advantages in the new environment through mergers, acquisitions, and other kinds of tie-ups. However, once some large takeovers have taken place, other giants are obliged to follow in order to maintain their share in the world market. In this sense, evidence suggests many mergers in the present wave are defensive, but that does not stop their overall effect in a number of cases from being welfare reducing due to potential reduction in competition as outlined above.

3.1 Competition Policy Implications for Developing Countries

Whether the mergers take place in the U.S. or Europe or through cross borders takeovers in developing countries themselves, there are serious competition policy concerns for developing countries. If the largest producers in, say, the U.S. automobile industry merge, this may not only lead to anti-competitive behaviour in the U.S. but also similar or worse behaviour in developing countries (e.g. cartelisation of markets, increasing barriers to entry). The U.S. has long had competition policy which provides it with defence against such welfare-reducing consequences of mergers. However, even with competition policy, a developing country is likely to find it difficult to deal with this phenomenon.

In the famous example of the Boeing-McDonell Douglas takeover case, although both companies were located in the U.S., the European Community objected to the

[2] It is important however to remember that not all mergers necessarily lead to increased monopoly power; even when they do, they are not always welfare reducing. Some of these points will be elaborated in the following sections. (See further Scherer and Rose, 1992; Singh 1992a, 1992b)
[3] For an analysis of the relative magnitude of previous merger waves, see Golbe and White (199X); Singh (1992); Hughes and Singh (1980)
[4] Discussed only mergers, but other kinds of tie-ups can have similar anti-competitive effects. Often a case-by-case investigation is needed.

merger on account of its potentially competition reducing effects in Europe.[5] The Community was able to extract important concessions from Boeing before the merger was approved. It is now common place for several jurisdictions, in industrial countries to scrutinise all large proposed mergers for their effects on competition even if they occur abroad.[6]

Leaving aside China, India, Brazil, and other relatively industrialised NICs, for developing countries it will be difficult to stop anti-competitive behaviour by the local subsidiaries of merging large corporations in industrialised countries. These corporations may behave competitively within industrial countries because of their effective competition regulation but may indulge in anti-competitive practices in developing countries; a Ghana or a Tanzania is likely to find it difficult to prove, let alone punish predation or abusive pricing by large industrial country corporations.

Recently, U.S. antitrust authorities imposed a fine of $US 700 million on the leading European producers of vitamins for creating a cartel to charge high prices to consumers. If such cartels can operate in the U.S. with all of its regulatory machinery and its extra-territorial reach, the task of adequately policing such abuses is likely to be beyond the capacity of most developing countries' competitive authorities. These considerations suggest that the huge current international merger movement, even though it is largely occurring in advanced countries, has potentially serious adverse implications for developing countries. Therefore, the latter not only need competition policies in their own countries but also international and South-South co-operation. They also need to seek help from the international community for co-operative action against potentially anti-competitive practices of the mammoth corporations which are emerging in industrial countries as a consequence of the current merger wave.

3.2 Level Playing Field

The analysis of the international merger wave also suggests another area of concern for more advanced developing countries. This relates to the question of unequal competition between large multinational and domestic big corporations in these countries. Even the largest developing country corporations tend to be much smaller than the industrial country multinationals. The large merger wave of the 90s is likely to make this disparity even bigger. By worldwide mergers and tie-ups, the advanced country corporations are able to integrate their worldwide operations. This may be a source of genuine technical economies of scale, but evidence indicates that in most industries average cost curves are L-shaped, that is to say after a threshold size which is relatively small and which most of these giant corporations would already have achieved even before mergers. The economies which nevertheless the multinationals are able to achieve through integration are those relating to bulk buying of inputs, reduced cost of capital due to large size as well as economies achieved in advertising and other marketing activities on a large scale. To the extent that these economies depend on the market power of the

[5] See further Khemani (1998); WTO (1997)
[6] See further Jenny (1999) and Fox (1999) in *Policy Directions for Global Merger Review, (1999).*

multinational in relation to inputs, the cost saving measures are not necessarily welfare enhancing; furthermore, they create barriers to entry which make the markets less contestable.

During the last fifty years, countries like Japan as well as many NICs in Asia and Latin America have been able to foster the development of big businesses to the advantage of their overall economic development through state support in various ways. These large domestic corporations have often been the leaders in the diffusion of new technologies and the adaptation of imported technologies to domestic circumstances.[7] In the new economic environment, these firms are likely to be handicapped in three significant ways:

a) through the limiting of state aid as part of WTO disciplines
b) through the increased size and market powers both in the product and input markets of large multinationals
c) through increased barriers to entry and contestability which the merger boom creates.

In these circumstances, it will be much more difficult than before for large developing country corporations to become even national let alone international players.

It is normal for multinationals to complain that there is not a level playing field between themselves and the national corporations whom the governments often support; hence, the demand for national treatment. However, their actual situation is more complicated and if anything liberalisation and globalisation together with the international merger movement have made the playing fields much more unequal from the perspective of large developing country corporations.

3.3 Privatisation, Deregulation, and Competition Policy

Many of the same ideological, political, and economic forces of liberalisation and globalisation which have lead to the current gigantic merger wave in the industrial countries have also been responsible for fundamental changes in the organisation of economic activity in developing countries around the world. In the 1980s and particularly during the 1990s many developing countries have been undergoing far reaching market oriented reforms leading to considerable demolition in the direct role of the state in economic activity. This has resulted in widespread privatisation, deregulation, internal and external financial liberalisation.

In the overall context, it is not difficult to see why the need for competition policy becomes crucial. Many of the privatised companies were natural monopolies under state ownership. Privatising them does not necessarily lead to greater social welfare since it simply involves replacing the public monopoly with a private one. The former may be more preferable to the latter from a social welfare perspective as there may be some consideration given to the public purpose in its activities. The existence of a large state sector is probably an important reason why many developing countries have not until

[7] Amsden and Singh, (1995a)

now felt it necessary to have a competition policy. However, in the new privatised domestic economic environment, competition and regulatory policies become essential. Moreover, as Stiglitz points out, liberalisation cannot substitute for a competition policy if liberalised imports and exports become subject to domestic monopolistic restrictions.

Khemani (1999) calls attention to another important problem in this area which affects many developing countries: privatisation via foreign takeovers. He reports cases where foreign acquiring firms, normally multinational enterprises, demand that governments erect barriers to entry or permit certain pricing practices. He notes, "Often developing and emerging market economies facing hard budget constraints or rising deficits, and/or are in desperate need of foreign investment, may have no choice but to cave in to such demands" (Khemani, 1999).

IV, Competition Policies in Advanced Economies: A Role Model for Developing Countries?

The argument so far has suggested that the new internal and external environment facing developing countries makes it necessary for them to have competition policies. The important question and one which is central to this paper is what kind of policies would be appropriate for developing countries. Should developing countries simply follow the advanced countries in their competition policies and enact legislation accordingly? To answer this question it is necessary to first ask what kind of competition policy do the advanced countries follow? Here, the significant point is that there are major differences among them in the policies that they pursue, their underlying philosophies, their legislative practices, and their nodes of implementation.[8]

The U.S. which has long experience in competition policy – first U.S. legislation was passed nearly one hundred years ago in response to the merger movement of the turn of the century referred to earlier – take a so-called structural approach to this issue. Competition is regarded as being a good thing in itself and anti-trust laws (including FTC rulings and Supreme Court judgements) attempt to discourage anti-competitive practices. The spirit of this view is well captured in the epigram: the purpose of competition policy is to advance the competitive process rather than to protect the competitors. The WTO report notes, "A guiding principle that is often referred to by competition agencies and tribunals or courts is that 'competition law protects competition, not competitors'" (WTO, 1997).

Competition policy in the U.K. and in Western Europe has traditionally been based on a rather different philosophy. It does not regard competition as an end in itself, but a means to an end. This leads to a trade-off approach – encroachments on competition are acceptable if they are adequately counterbalanced by other benefits to the community. Thus, in the simplest case, mergers between two large firms in the same industry – which

[8] For a fuller discussion of competition policy in advanced countries see Scherer (1994), Hughes (1996), Waverman (1995), Amsden and Singh (1994). For the section on competition policy in Japan, this paper draws from Amsden and Singh (1994).

under classic U.S. anti-trust policy would be ruled out per se – may be permitted under traditional U.K. competition laws if it can be shown that the welfare reducing effect of increased market power resulting from the merger is more than matched by gains to the society as a consequence of reduced costs of production because of economies of scale and/or synergy.

This leads in practice to a case-by-case approach to mergers rather than the promulgation of per se structural rules as has historically been the case in the U.S. Singh (1993) has noted that there has been some convergence of competition policies in the U.S. and the U.K. in the 1980s and the 1990s. The U.S. authorities, partly due to increased international competition started to give greater importance to the so-called "economies of scale defense" that they used to do before. Regulators in the U.K. on the other hand have started giving much greater weight to the effects of mergers or of other kinds of corporate behaviour on competition per se than to other considerations (such as regional impact) in the calculation of net social gain.

Among industrial countries, Japan has an even more distinct approach to competition policy questions. Following the end of World War II, the U.S. occupation authorities enacted U.S. type anti-trust laws in part to punish the large Japanese firms – the *zaibatsu* – who were thought to have been responsible for aiding and abetting Japanese aggression and war effort. However, as Professors Richard Caves of Harvard University and Professor Uekusa of Tokyo University, leading students of Japanese industrial organisation, point out that the U.S. imposed laws had no domestic constituency in the country. The laws therefore soon fell into disuse for this as well as other strategic cold war related considerations. Although the *zaibatsu* disbanded, they soon re-emerged in the form of a looser association of companies called *keiretsu*. Moreover, the competition policy in Japan became subservient to a country's rigorous industrial policy. Professor Okimoto explains the philosophy behind the Japanese approach to the subject:

> "…the Japanese government takes a more pragmatic approach to antitrust enforcement, one that makes allowances for national goals such as industrial catch-up. It takes into account other collective values and extenuating circumstances in weighing enforcement decisions against the letter and spirit of antitrust laws. Included here are such considerations as economies of scale, enhanced efficiency, optimal use of scarce resources, international competitiveness, heightened productivity, business cycle stabilisation, industrial orderliness, price stabilisation and economic security" (Okimoto, 1989).

Competition policy in Japan has evolved over time as indeed has industrial policy.[9] This has been particularly true since Japan joined the OECD and began to implement trade and financial liberalisation measures. The evolution of Japanese competition policy in the 1970s and the 1980s is interesting but not as relevant to developing countries as the competition policy practiced by Japan between 1950-1973.

[9] See Singh (1998), Tsuru (1993), Johnson, Tyson, et al. (1989)

This is because at the beginning of the period, Japan was very much like a developing country with low level of industrialisation and economic development. Indeed, its industrialisation prospects at the time were thought to be altogether precarious. How Japan caught up with the West starting from such low levels is clearly a story of great interest to developing countries. As we shall see below, the theory and practice of competition policy during the Japanese catch-up process during the 1950s and 1960s is particularly instructive for such economies.

To sum up this brief review of the different approaches to competition policy in the U.S., U.K., and Japan suggests that the most appropriate role model from the perspective of economic development may be that of Japan during 1950-73. This period will therefore be examined more closely below. However, before moving to that discussion, it may be useful to consider what insights are provided by economic theory to the question of competition policies for countries at different levels of development.

V. Economic Theory, Competition Policy, and Development

Recent advances in economic theory, particularly the agency theory, the transaction cost theory, and the information theory, have greatly enriched our understanding of how competition and competition policy may work in various spheres of the economy and in different economies. Thus, a leading authority on the theory of industrial organisation has recently observed:

> "Competition is an unambiguously good thing in the first-best world of economists. That world assumes large numbers of participants in all markets, no public goods, no externalities, no information asymmetries, no natural monopolies, complete markets, fully rational economic agents, a benevolent court system to enforce contracts, and a benevolent government providing lump sum transfers to achieve any desirable redistribution. Because developing countries are so far from this ideal world, it is not always the case that competition should be encouraged in these countries" (Laffont, 1998).

Professor Laffont provides a number of examples to support his contention. All of these involve what economists call the theory of the "second best." The latter asserts that if any one of the assumptions required for the validity of the fundamental theorems of welfare economics cannot be met, restricted rather than unrestricted competition may be a superior strategy. Laffont draws particular attention to the demonisation of cross subsidisation by large public utilities by developed country economists. However, he points out that in developing countries, where in practice, taxes cannot be collected from the wealthy for re-distribution, it may be a good strategy for the government to require public utilities in these countries to subsidise poor consumers in the countryside at the expense of richer residents in the city.

Laffont suggests that even if competition policy of the kind followed by advanced countries such as the U.S. or the U.K. were appropriate for poor African countries, they are a long way from having the institutional capacity to implement such policies. The implementation of a comprehensive competition policy requires a strong state which many developing countries, at low levels of industrialisation do not have. Therefore, at the very least, there will need to be far fewer and simpler competition rules which are capable of being enforced. It clearly would be unfair if not absurd to subject a Sierra Leone to the same competition policy disciplines as the U.S.

We turn now to the consideration of the case of the semi-industrial countries, many of whom are now fairly advanced in industrial development, e.g., Korea, India, Brazil, Mexico. These countries also have reasonably strong states with competent government machinery. However, economic theory suggests that even for these economies, the U.S.-U.K. type competition policies may be inappropriate. A very important reason for this conclusion is that the essential focus of competition policy in advanced countries such as the U.S. is the promotion of allocative efficiency and reduced prices for consumers. However, from the standpoint of economic development, this perspective is too narrow and static. In order to raise their people's standard of living, a central objective of developing countries must necessarily be the promotion of long term growth of productivity. The pursuit of this objective of dynamic rather than static efficiency requires among other things high rates of investment. In a private enterprise economy, this necessitates encouragement of the entrepreneurs' propensity to invest. However, the private sector's animal spirits are likely to be dampened if as a result of competition profits became too low even if temporarily.

This suggests that unfettered competition may not be appropriate for a developing economy. Economic theory as well as experience indicate that in the real world of incomplete and missing markets, unfettered competition may lead to price wars and ruinous rivalry and therefore may be inimical to future investment: from this perspective , too much competition can be as harmful as too little. What is required by developing economies is an optimal degree of competition which would entail sufficient rivalry to reduce inefficiency in the corporate use of resources at the microeconomic level, but not so much competition that it would deter the propensity to invest. This central analytical point is altogether ignored in competition policy discourse in countries such as the U.S. where the concept of optimal degree of competition is simply assumed to be maximum competition: the more competition the better.[10]

It may be useful in this context to reflect on the operation of competition policy of Japan during 1950-1973. The Japanese economy achieved historically unprecedented growth during this time span: its manufacturing production rose at a rate of 13% per annum. [11] A central role in this spectacular economic advance was played by the very

[10] See earlier discussion of philosophy of U.S. competition policy which finds virtue in competition itself rather than to examine its effects.

[11] "When Japanese industrial production expanded at a phenomenal rate of about 13% per annum, GDP at 10% per annum, and its share in world exports of manufacture rose by a huge 10 percentage points" (Singh 1998)

high rates of savings and investment in the Japanese economy. As noted earlier, the competition policy was subordinated to industrial policy whose essential concern was to maintain the private sector's high propensity to invest. For this purpose, the Japanese government frequently imposed restrictions on product market competition. Amsden and Singh (1994) note: "It (MITI) encouraged a variety of cartel arrangements in a wide range of industries – export and import cartels, cartels to combat depression or excessive competition, rationalisation cartels, etc…Similarly, believing that large scale enterprises were required for promotion of technical change and for Japanese firms to compete effectively with their western counterparts, MITI encouraged mergers between leading firms in key industries" (Amsden and Singh, 1994).

The Korean government broadly followed the Japanese strategy of economic development. It had a rigorous industrial policy which dominated competition policy. The government helped create the mammoth corporations, the *chaebol*, which went on to capture the world markets. Korea was uneqivocally an industrially backward country in the 1950s. The country has one of the highest rate of industrial concentration in the world but nevertheless the joint conglomerates compete with each other fiercely. A significant part of the competition is of the non-market variety in which the *chaebol* compete for government support which is given in return for meeting specified targets for exports, new product development, and technological change. In the market place, the *chaebol* compete for market share as that determines their investment allocations in their particular industries. As in Japan from 1950-1973, the Korean government until recently has purposefully co-ordinated industrial investments by competing *chaebol* so as to prevent overcapacity and too much competition.

Policies adopted by these East Asian countries find endorsement in the new developments in economic theory. Essentially, modern economic theory suggests that dynamic efficiency is best promoted by a combination of co-operation and competition between firms rather than by maximum or unfettered competition.

It has been suggested by some scholars and high U.S. government officials that the recent financial crisis in Asia demonstrates the failure of state directed capitalism of the Asian countries. However, a careful analysis of these issues suggests that the crisis was caused not by too much state direction but rather too little. Overinvestment by the *chaebol* in Korea or the property bubble in Thailand were caused essentially by the fact that these countries were pursuing capital account liberalisation in the immediate period before the crisis. Koea had become a member of the OECD in the early 1990s and in fact had abolished its planning agency. Neither industrial overinvestment by the *chaebol* nor excessive investment in the property sector in Thailand occurred when the governments were co-ordinating investment activity.

VI. Policy Implications

The following main policy conclusions emerge from the theoretical and empirical analysis of competition policy and economic development as well as from our earlier

discussion of the new developments in the international economy and its implications for competition policy.

1) Developing countries do need a competition policy in the wake of the international merger movement as well as privatisation, de-regulation, and liberalisation which have occurred in domestic economies.
2) In examining this issue, distinction was made between countries at low levels of development and with meagre institutional capacity and semi-industrial countries with greater institutional capabilities. In neither case was the US-UK type of competition policy appropriate.
3) To address seriously the concerns for developing countries with respect to competition policy, this paper has suggested new economic concepts in place of those used in the current WTO discourse on the subject. Specifically, the paper has called attention to the following points:

    a) the emphasis on dynamic rather static efficiency as the main purpose of competition policy from the perspective of economic development
    b) the concept of optimal degree of competition to promote long term growth of productivity
    c) the concept of optimal combination of competition and co-operation to achieve fast long term economic growth
    d) the critical significance of the role of government co-ordination of investment decisions by private firms
    e) the concept of simulated competition, i.e., contests, for support which can be as powerful as real market competition
    f) the importance of industrial policy and the coherence between industrial and competition policies

It is clear from the above analysis that in order to give effect to the Singapore WTO Ministerial Declaration of December 1996, “to ensure that the development dimension is fully taken into account,” it would not be enough to simply suggest that all that developing countries need is a longer time frame to be able to implement US-UK type competition policies. The accepted concept of special and differential treatment for developing countries needs to be extended in a creative manner to issues of competition policy and economic development of less developed countries as outlined in the concepts above.

These concepts have important implications for TRIMS, TRIPS, and a number of other parts of the Uruguay Round Agreements; however, this issue will not be examined here as the focus is competition policy. These economic concepts also have implications for WTO terms such as market access, national treatment, and transparency. To illustrate, it may be perfectly legitimate for a developing country competition authority to allow mergers of large domestic firms so that they can go some way in competing with the multinationals from abroad. In terms of the impact on economic development, the “most favoured nation” clause is more defensible as compared with national treatment.

None of the above deals with the question of what developing countries can do to effectively protect themselves against potential anti-corruption behaviour by the giant mergers at the international level. For semi-industrial countries, one way to obtain more level playing fields is to promote more national mergers. This means that the GATT concept of national treatment should not be applied to mergers between developing country firms which do not have anti-competitive implications. For less developed countries, the ideal solution would be an international competition authority which would ensure that competition is not reduced and that mega firms in the international economy are either broken up or in any case prohibited from abusing their dominant position. If such an international agreement is not feasible, in view of the well known opposition of the U.S. to any potential challenge to its extra-territoriality of its competition laws, all that small developing countries can do id to co-operate with each other say through regional pacts to contain these restrictive business practices. A Sierra Leone or Malaysia maynot have any real political or economic power on its own to influence merger activity in advanced countries, but ASEAN and OAU are likely to have greater impact.